IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF YAVAPAI

DIVISION PRO TEM B

HON. WARREN R. DARROW

By: Diane Troxell, Judicial Assistant

CASE NUMBER: V1300CR201080049

Date: May 25, 2011

TITLE:	COUNSEL:
STATE OF ARIZONA	Sheila Sullivan Polk Yavapai County Attorney Bill Hughes, Esq. Deputy Yavapai County Attorneys
(Plaintiff)	(For Plaintiff)
vs.	
JAMES ARTHUR RAY	Thomas K. Kelly, Esq. 425 E. Gurley Prescott, AZ 86301 Luis Li, Esq. Brad Brian, Esq. Truc Do, Attorney at Law Miriam Seifter, Attorney at Law MUNGER TOLLES & OLSON LLP 355 S. Grand Avenue, 35th Fl. Los Angeles, CA 90071
(Defendant)	(For Defendant)

UNDER ADVISEMENT RULING ON DEFENDANT'S MOTION TO EXCLUDE PROPOSED EXPERT TESTIMONY OF DOUGLAS SUNDLING

The Court has considered the Defendant's motion, the State's response, and the reply. The Court determines that oral argument is not necessary for an appropriate determination of this motion.

As was the case with witness Steven Pace, the Court is again placed in the position of being asked to rule on the preclusion of a witness without hearing foundational testimony, which would occur preferably in a pretrial context but may also occur at trial. However, the Court has considered in its entirety the pamphlet authored by Mr. Sundling – "The Sweatlodge: An Interpretation," a copy of which was attached to the Defendant's motion, and has considered many of the other attachments to the motion, including some of the articles taken from Mr. Sundling's website "bogus-sweatlodge.com." A review of this information leads this Court to conclude that Mr. Sundling's proposed testimony would not "assist the trier of fact to understand the evidence or to determine a fact in issue." Rule 702, Ariz.R.Evid.

The Court once again feels compelled to preface its observations concerning the evidence by noting that it is not commenting on the evidence in any manner except to the extent necessary to explain its rulings. But the primary case authority cited to this Court – authority relating to the nature of the legal duty of coaches, instructors, and co-participants of recognized sports activities – has no application to the issues presented thus far in this case.

Without in any way suggesting any degree of invalidity or validity, the Court notes that much of the evidence in this case has related to activities – specifically the sweat lodge ceremony and other Spiritual Warrior sessions – whose stated purposes included achieving insight, change, and self-improvement in various aspects of one's life. There has been evidence that the claimed positive effects of "altered states" were promoted in the context of the sweat lodge and other activities. Unlike the considerable body of law that has developed concerning the duty of a coach or instructor to avoid increasing the risks inherent in learning or participating in a sports-type activity, however, there is apparently no such law relating to duties arising from what some people consider to be, at least in part, religious or spiritual ceremonies that might produce "altered states" in some participants.

Mr. Sundling's statements to Ms. Polk in his letter dated January 10, 2011, a copy of which is attached to the Defendant's motion (Bates 006720 and 6721), provide a succinct explanation as to why, even from the State's perspective of the case, expert testimony is not warranted. Mr. Sundling's basic argument is that in his opinion Mr. Ray's ceremony was not a sweat lodge: "Trust your intuitions about what James Ray did, knowing what he designed and executed wasn't a sweatlodge. The only relationship the sweatlodge has to this tragic incident is the unfortunate mislabeling of a sweat ceremony designed and executed by James Ray to be an extreme endurance contest," which lacked "the inherent safety features of a traditional sweat lodge." Mr. Sundling notes: "As you indicated, a similar argument can be framed using common sense without referencing sweatlodges."

The Court concludes that there is no recognized, special legal standard of care applicable to the facts of this case that is comparable to the standards applicable to cases involving physicians, coaches, and other professions or occupations and concludes that the health risks attendant to exposure to extreme heat is a subject properly addressed by medical experts. Thus, as noted above, Mr. Sundling's testimony would not assist the jury in the manner required for admissibility under Rule 702. Therefore,

IT IS ORDERED *granting* the Defendant's motion to exclude with regard to the State's case-in-chief.

DATED this 25th day of May, 2011.

Warren R. Darrow
Superior Court Judge

cc: Victim Services Division